

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH J. BERRY,

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

Case No. 11-10569

Honorable John Corbett O'Meara

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION FOR AN AWARD OF FEES AND COSTS**

This matter came before the court on defendant Ford Motor Company's June 12, 2015 Motion for an Award of Fees and Costs. Plaintiff Joseph J. Berry and his counsel filed a response June 26, 2015; and defendant Ford filed a reply July 9, 2015. In addition, Ford filed an objection to the taxed bill of costs June 22, 2015. On March 16, 2016, the United States Court of Appeals for the Federal Circuit issued its mandate in the appeal of this case. The appellate court had affirmed this court's prior decision and entered judgment in favor of Ford Motor Company February 8, 2016.

In exceptional patent cases a court may award reasonable attorneys' fees to the prevailing party. 35 U.S.C. § 285. An exceptional case is one that stands out from others with respect to the substantive strength of the party's litigating position or the unreasonable manner in which the case was litigated. Octane Fitness, L.L.C. v. ICON Health & Fitness, Inc., 134 S. Ct. 1749 (2014).

In this case Ford argues that plaintiff Berry's case was exceptionally weak and his pursuit of the correction of inventorship claim was exceptionally poor, either of which would constitute an exceptional case for which it should be awarded \$422,303.81 in attorneys' fees. Although the court

agrees that Plaintiff's case was weak, it was not "exceptionally weak" to the extent that defendant Ford, the prevailing party, should be awarded attorneys' fees.

In addition, Ford seeks \$53,740.37 in costs that were not awarded in the initial Taxed Bill of Cost. Having objected to the bill of costs and now shown the necessity for the exemplification and copy fees, the court will order that the taxed bill of costs be amended to include them.

ORDER

It is hereby **ORDERED** that defendant Ford Motor Company's June 12, 2015 Motion for an Award of Fees and Costs is **GRANTED IN PART** and **DENIED IN PART**.

It is further **ORDERED** that the request for attorneys' fees is **DENIED**.

It is further **ORDERED** that the request for additional costs for exemplification and copy fees in the amount of \$53,740.37 is **GRANTED**.

s/John Corbett O'Meara
United States District Judge

Date: April 5, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, April 5, 2016, using the ECF system.

s/William Barkholz
Case Manager